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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Lorenzo Leon Brown,

No. CV-17-00377-TUC-DCB

10 Plaintiff,

ORDER

11 v.

12 Charles Ryan, et al.,

13 Defendants.

14

15 On November 19, 2018, Defendant Jacobs filed a Motion for Summary Judgment
16 alleging the Plaintiff failed to exhaust administrative remedies prior to filing this law suit.
17 The Prisoner Litigation Reform Act (PLRA) requires administrative exhaustion, except in
18 certain circumstances where remedies may be rendered effectively unavailable. *See*
19 ((Order (Doc. 31) at 4-5) (denying Motion to Dismiss for failure to exhaust without further
20 development of the record)). On November 21, 2018, the Court issued a warning to the
21 Plaintiff that he is required pursuant to Rule 56 of the Federal Rules of Civil Procedure to
22 file a response to the Motion for Summary Judgment and that failure to respond may be
23 treated by this Court as consent to the granting of the motion. (Order (Doc. 75)). The
24 Plaintiff was directed to file his Response by December 21, 2018. He did not file a
25 Response. Instead, on January 22, 2019, the Plaintiff filed a Motion for Appointment of
26 Legal Counsel and Enlargement of Time. (Doc. 77.)

27 The Court refers the Plaintiff to its prior Order, issued on June 27, 2018, denying a
28 previous request for appointment of counsel. Nothing has changed in respect to the

1 analysis for appointment of counsel in respect to the merits of the case. Plaintiff has
2 established that he is sufficiently capable of communicating his arguments to the Court to
3 represent himself at this point in the litigation. Specifically, he responded to the Motion to
4 Dismiss and prevailed. He has sought discovery from the Defendant, and in addition to his
5 current request for counsel, he explains that some limited discovery is necessary before he
6 can file a Response to the Motion for Summary Judgment.

7 The Court notes that on November 19, 2018, it struck Plaintiff's filing with the
8 Court of discovery requests he had served on Defendant Jacobs because discovery
9 documents are not appropriately filed with the Court. Only a Notice of Service of discovery
10 is filed. (Order (Doc. 72)). The Court directed that both parties should answer each other's
11 discovery requests. A review of the docket reflects that neither party has filed a Notice of
12 any responsive discovery, which may be because this Court granted a Motion to Continue
13 Discovery filed by the Defendants for 30 days following disposition by this Court of
14 Defendant Jacobs Motion for Summary Judgment. The Court is now persuaded that some
15 limited discovery is necessary before the Plaintiff can file a Response to the Motion for
16 Summary Judgment on the issue of exhaustion.

17 The Defendant shall provide the Plaintiff with copies of any of his informal or
18 formal grievances and grievance responses that Defendant did not attach to the Motion for
19 Summary Judgment beginning 30 days prior to Plaintiff's June 22, 2016 transfer to
20 Rynning Unit and through to 30 days after the transfer. Plaintiff may serve no more than
21 10 interrogatories, including all discrete parts, on Defendant Jacobs relevant to the question
22 of exhaustion and/or whether any grievance process was effectively unavailable.
23 Thereafter, the Plaintiff shall file his Response to the Motion for Summary Judgment.

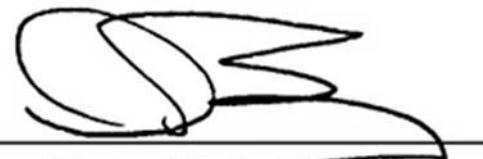
24 **Accordingly,**

25 **IT IS ORDERED** that the Motion for Appointment of Legal Counsel (Doc. 77) is
26 DENIED.

27 **IT IS FURTHER ORDERED** that the Motion for Enlargement of Time (Doc. 77)
28 is GRANTED as follows: 1) Plaintiff shall have 30 days to serve no more than 10

1 interrogatories, including subparts, on Defendant Jacobs; 2) Defendant Jacobs shall have
2 14 days to answer the interrogatories and shall file a Notice of Response to Interrogatories
3 with the Court; 3) Defendant Jacobs shall provide Plaintiff with copies of any grievances
4 and responses as directed herein within 14 days of the filing date of this Order; 4) Plaintiff
5 shall file a Response to the Motion for Summary Judgment by June 5, 2019, and 5) failure
6 to file a Response may result in the Court granting the Motion for Summary Judgment and
7 **NO FURTHER EXTENSIONS OF TIME SHALL BE GRANTED.**

8 Dated this 11th day of February, 2019.

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13 Honorable David C. Bury
14 United States District Judge
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